STATE OF NEVADA, SMOKE MANAGEMENT PROGRAM

Applicable State and Local Statutes and Regulations

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Health and Safety

NRS 244.361 Regulation and control of smoke and pollution of air.

1. Except as provided in subsection 3, the boards of county commissioners of the various counties of this state are granted the power and authority, by ordinance regularly enacted, to regulate, control and prohibit, as a public nuisance, the excessive emission of dense smoke and air pollution caused by excessive soot, cinders, fly ash, dust, noxious acids, fumes and gases within the boundaries of the county.

2. If an ordinance adopted pursuant to subsection 1 involves or affects agricultural operations, any plan or program to effectuate that ordinance must allow for customarily accepted agricultural practices to occur on agricultural land. A governmental entity which is considering the adoption of such a plan or program shall consult with the division of agriculture of the department of business and industry or local conservation districts to determine what customarily accepted agricultural practices may be affected by the proposed plan or program.

3. No existing compliance schedule, variance order or other enforcement action relating to air pollution by fossil fuel-fired steam generating facilities, with a capacity greater than 1,000 megawatts, may be enforced until July 1, 1977.

(Added to NRS by 1957, 149; A 1975, 1126; 1993, 519; 1995, 528)

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Health, Safety and Morals

NRS 268.410 Regulation and control of smoke and pollution of air.

1. Except as provided in subsection 3, and in addition to any authority or power provided by the charter of any incorporated city in this state, whether incorporated by general or special act, or otherwise, there is granted to the governing body of each of the cities incorporated under any law of this state the power and authority, by ordinance regularly enacted, to regulate, control and prohibit, as a public nuisance, the excessive emission of dense smoke and air pollution caused by excessive soot, cinders, fly ash, dust, noxious acids, fumes and gases within the corporate limits of the city.

2. If an ordinance adopted pursuant to subsection 1 involves or affects agricultural operations, any plan or program to effectuate that ordinance must allow for customarily accepted agricultural practices to occur on agricultural land. A governmental entity which is considering the adoption of such a plan or program shall consult with the division of agriculture of the department of business and industry or local conservation districts to determine what customarily accepted agricultural practices may be affected by the proposed plan or program.

3. No existing compliance schedule, variance order or other enforcement action relating to air pollution by fossil fuel-fired steam generating facilities, with a capacity greater than 1,000 megawatts, may be enforced until July 1, 1977.

(Added to NRS by 1957, 149; A 1975, 1126; 1993, 519; 1995, 528)

NRS CROSS REFERENCES.

Air pollution control, NRS ch. 445B

Engine emission controls, NRS 445B.700-445B.845

Mandatory programs for control of air pollution in counties whose population is 100,000 or more, NRS 445B.500-445B.540

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C.J.S. Municipal Corporations § 298.

Nevada Revised Statutes,
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Chapter 445B, Air Pollution

General Provisions

NRS 445B.100 Declaration of public policy.

1. It is the public policy of the State of Nevada and the purpose of NRS 445B.100 to 445B.640, inclusive, to achieve and maintain levels of air quality which will protect human health and safety, prevent injury to plant and animal life, prevent damage to property, and preserve visibility and scenic, esthetic and historic values of the state.

2. It is the intent of NRS 445B.100 to 445B.640, inclusive, to:

(a) Require the use of reasonably available methods to prevent, reduce or control air pollution throughout the State of Nevada;

(b) Maintain cooperative programs between the state and its local governments; and

(c) Facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within a single jurisdiction.

3. The quality of air is declared to be affected with the public interest, and NRS 445B.100 to 445B.640, inclusive, are enacted in the exercise of the police power of this state to protect the health, peace, safety and general welfare of its people.

4. It is also the public policy of this state to provide for the integration of all programs for the prevention of accidents in this state involving chemicals, including, without limitation, accidents involving hazardous air pollutants, highly hazardous chemicals, highly hazardous substances and extremely hazardous substances.

(Added to NRS by 1971, 1191; A 1993, 2851)—(Substituted in revision for NRS 445.401)

NRS 445B.110 "Air contaminant" defined.

"Air contaminant" means any substance discharged into the atmosphere except water vapor and water droplets.

(Added to NRS by 1971, 1192)—(Substituted in revision for NRS 445.411)

State Environmental Commission

NRS 445B.210 Powers of commission. The commission may:

1. Subject to the provisions of NRS 445B.215, adopt regulations consistent with the general intent and purposes of NRS 445B.100 to 445B.640, inclusive, to prevent, abate and control air pollution.

2. Establish standards for air quality.

3. Require access to records relating to emissions which cause or contribute to air pollution.

4. Cooperate with other governmental agencies, including other states and the Federal Government.

5. Establish such requirements for the control of emissions as may be necessary to prevent, abate or control air pollution.

6. By regulation:

(a) Designate as a hazardous air pollutant any substance which, on or after October 1, 1993, is on the federal list of hazardous air pollutants pursuant to 42 U.S.C. § 7412(b); and

(b) Delete from designation as a hazardous air pollutant any substance which, after October 1, 1993, is deleted from the federal list of hazardous air pollutants pursuant to 42 U.S.C. § 7412(b), based upon the commission's determination of the extent to which such a substance presents a risk to the public health.

7. Hold hearings to carry out the provisions of NRS 445B.100 to 445B.640, inclusive, except as otherwise provided in those sections.

8. Establish fuel standards for both stationary and mobile sources of air contaminants. Fuel standards for mobile sources of air contaminants must be established to achieve air quality standards that protect the health of the residents of the State of Nevada.

9. Require elimination of devices or practices which cannot be reasonably allowed without generation of undue amounts of air contaminants.

(Added to NRS by 1971, 1193; A 1973, 1813; 1993, 2852; 1997, 3230)

ADMINISTRATIVE REGULATIONS.

Air controls, NAC ch. 445B
Fleets, use of alternative fuels, NAC ch. 486A

NRS 445B.220 Additional powers of commission. In carrying out the purposes of NRS 445B.100 to 445B.640, inclusive, the commission, in addition to any other action which may be necessary or appropriate to carry out such purposes, may:

1. Cooperate with appropriate federal officers and agencies of the Federal Government, other states, interstate agencies, local governmental agencies and other interested parties in all matters relating to air pollution control in preventing or controlling the pollution of the air in any area.

2. Recommend measures for control of air pollution originating in this state.

(Added to NRS by 1971, 1194; A 1973, 1814)—(Substituted in revision for NRS 445.471)

NRS 445B.230 Powers and duties of department. The department shall:

1. Make such determinations and issue such orders as may be necessary to implement the purposes of NRS 445B.100 to 445B.640, inclusive.

2. Apply for and receive grants or other funds or gifts from public or private agencies.

3. Cooperate and contract with other governmental agencies, including other states and the Federal Government.

4. Conduct investigations, research and technical studies consistent with the general purposes of NRS 445B.100 to 445B.640, inclusive.

5. Prohibit as specifically provided in NRS 445B.300 and 445B.320 and as generally provided in NRS 445B.100 to 445B.640, inclusive, the installation, alteration or establishment of any equipment, device or other article capable of causing air pollution.

6. Require the submission of such preliminary plans and specifications and other information as it deems necessary to process permits.

7. Enter into and inspect at any reasonable time any premises containing an air contaminant source or a source under construction for purposes of ascertaining compliance with NRS 445B.100 to 445B.640, inclusive.

8. Specify the manner in which incinerators may be constructed and operated.

9. Institute proceedings to prevent continued violation of any order issued by the director and to enforce the provisions of NRS 445B.100 to 445B.640, inclusive.

10. Require access to records relating to emissions which cause or contribute to air pollution.

11. Take such action in accordance with the rules, regulations and orders promulgated by the commission as may be necessary to prevent, abate and control air pollution.

(Added to NRS by 1973, 1808)—(Substituted in revision for NRS 445.473)

NRS 445B.235 Additional powers of department. In carrying out the purposes of NRS 445B.100 to 445B.640, inclusive, the department may, if it considers it necessary or appropriate:

1. Cooperate with appropriate federal officers and agencies of the Federal Government, other states, interstate agencies, local governmental agencies and other interested parties in all matters relating to air pollution control in preventing or controlling the pollution of the air in any area.

2. On behalf of this state, apply for and receive funds made available to the state for programs from any private source or from any agency of the Federal Government under the federal act. All moneys received from any federal agency or private source as provided in this section shall be paid into the state treasury and shall be expended, under the direction of the department, solely for the purpose or purposes for which the grant or grants have been made.

3. Certify to the appropriate federal authority that facilities are in conformity with the state program and requirements for control of air pollution, or will be in conformity with the state program and requirements for control of air pollution if such facility is constructed and operated in accordance with the application for certification.

4. Develop measures for control of air pollution originating in the state.

(Added to NRS by 1973, 1809)—(Substituted in revision for NRS 445.474)

NRS 445B.240 Power of representatives of department to enter and inspect premises.

1. Any duly authorized officer, employee or representative of the department may enter and inspect any property, premises or place on or at which an air contaminant source is located or is being constructed, installed or established at any reasonable time for the purpose of ascertaining the state of compliance with NRS 445B.100 to 445B.640, inclusive, and rules and regulations in force pursuant thereto.

2. No person shall:

(a) Refuse entry or access to any authorized representative of the department who requests entry for purposes of inspection, as provided in this section, and who presents appropriate credentials.

(b) Obstruct, hamper or interfere with any such inspection.

3. If requested, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

(Added to NRS by 1971, 1194; A 1973, 1815)—(Substituted in revision for NRS 445.476)

Provisions For Enforcement

NRS 445B.300 Operating permit for source of air contaminant; notice and approval of proposed construction; administrative fees; failure of commission or department to act.

1. The commission shall by regulation:

(a) Require the person operating or responsible for the existence of each source of air contaminant, generally or within a specified class or classes, to apply for and obtain an operating permit for the source.

(b) Require that written notice be given to the director before the construction, installation, alteration or establishment of any source of air contaminant or of any specified class or classes of such sources, or the alteration of any device intended primarily to prevent or reduce air pollution. If within the time prescribed by regulation the director determines that:

(1) The proposed construction, installation, alteration or establishment will not be in accordance with the provisions of the plans, specifications and other design material required to be submitted under NRS 445B.100 to 445B.640, inclusive, or applicable regulations; or

(2) The design material or the construction itself is of such a nature that it patently cannot bring such source into compliance with NRS 445B.100 to 445B.640, inclusive, or applicable regulations, the director shall issue an order prohibiting the construction, installation, alteration or establishment of the source or sources of air contaminant.

2. The commission shall by regulation provide for:

(a) The issuance, renewal, modification, revocation and suspension of operating permits, and charge appropriate fees for their issuance in an amount sufficient to pay the expenses of administering NRS 445B.100 to 445B.640, inclusive, and any regulations adopted pursuant to those sections.

(b) The issuance of authorizations for the issuance of building permits pursuant to paragraph (a) of subsection 2 of NRS 445B.320.

3. Any failure of the commission or the department to issue a regulation or order to prohibit any act does not relieve the person so operating from any legal responsibility for the construction,

operation or existence of the source of air contaminant.

4. All administrative fees collected by the commission pursuant to subsection 2 must be accounted for separately and deposited in the state general fund for credit to the account for the management of air quality. This subsection does not apply to any fees collected by political subdivisions or their agencies.
(Added to NRS by 1971, 1196; A 1973, 1816; 1993, 2853)—(Substituted in revision for NRS 445.491)

Miscellaneous Provisions

NRS 445B.595 Governmental sources of air contaminants to comply with state and local provisions regarding air pollution; permit to set fire for training purposes; planning and zoning agencies to consider effects on quality of air.

1. Except as otherwise provided by subsection 2, all governmental sources of air contaminants shall comply with all local and state air pollution laws, regulations and ordinances.

2. A fire department, county fire protection district, fire protection training academy or training center may, after obtaining a permit for a specific site, set a fire at that site for training purposes so long as the site is not within an area in which an air pollution episode or emergency constituting, or likely to constitute, an imminent and substantial danger to the health of persons exists. The permit must be obtained from:

(a) The county air pollution control agency, if one has been designated pursuant to NRS 445B.500; or

(b) The director, if an agency has not been so designated.

3. All planning commissions, zoning boards of adjustment, and governing bodies of unincorporated towns, incorporated cities and counties shall in the performance of their duties imposed by chapter 278 of NRS or other statutes relating to planning and zoning consider the effects of possible air pollution and shall submit to the department for evaluation a concise statement of the effects on air quality by complex sources.

(Added to NRS by 1971, 1202; A 1973, 1822; 1975, 1406; 1989, 584)—(Substituted in revision for NRS 445.586)

Nevada Revised Statutes,
Title 47, Forestry; Forest Products and Flora,
Chapter 527, Protection and Preservation of Timbered Lands, Trees and Flora

CONTROLLED FIRES

1.NRS 527.122 Definitions. As used in NRS 527.122 to 527.128, inclusive, unless the context otherwise requires:

1.1. "Authority" means the state forester firewarden, or a local government, whichever is charged with responsibility for fire protection in the area where a controlled fire is to take place.

1.2. "Controlled fire" means the controlled application of fire to natural vegetation under specified conditions and after precautionary actions have been taken to ensure that the fire is confined to a predetermined area.

(Added to NRS by 1993, 1202)

REVISER'S NOTE.

Ch. 444, Stats. 1993, the source of NRS 527.122 to 527.128, inclusive, contains the following provisions not included in NRS:

"The legislature hereby finds and declares that:

1. Controlled fires reduce the risk of naturally occurring wildfires which are caused by highly flammable vegetation and which often result in catastrophic damage to life and property.

2. Fires are essential for the perpetuation, restoration and management of many plants and animals.

3. Controlled fires provide benefits to the public by ensuring the continuity of the wildlife and biological diversity in this state."

1.NRS 527.124 Regulations. The state forester firewarden shall adopt such regulations as he deems necessary to carry out and enforce the provisions of NRS 527.126 and 527.128.

(Added to NRS by 1993, 1202)

1.NRS 527.126 Requirements to conduct fire; governmental immunity.

1.1. The authority may authorize an agency of this state or any political subdivision of this state

to commence a controlled fire.

1.2. A controlled fire must be conducted:

1.(a) Pursuant to a written plan which has been submitted to and authorized by the authority; and

1.(b) Under the direct supervision of at least one person who is qualified to oversee such fires and who remains on site for the duration of the fire.

1.3. A controlled fire which is commenced pursuant to this section and which complies with laws relating to air pollution shall be deemed in the best interest of the public and not to constitute a public or private nuisance.

1.4. The State of Nevada, an agency of this state or any political subdivision or local government of this state, or any officer or employee thereof, is not liable for any damage or injury to property or persons, including death, which is caused by a controlled fire that is authorized pursuant to this section, unless the fire was conducted in a grossly negligent manner.

(Added to NRS by 1993, 1202)

1.NRS 527.128 Written plan.

1.1. The written plan required by NRS 527.126 must remain on site for the duration of the fire. The plan must be prepared by a person qualified to oversee a controlled fire and contain at least:

1.(a) A description and map of the area to be burned;

1.(b) A list of the personnel and equipment necessary to commence and control the fire;

1.(c) A description of the meteorological factors that must be present before commencing a controlled fire, including surface wind speed and direction, transport wind speed and direction, minimum mixing height, minimum relative humidity, maximum temperature and fine fuel moisture;

1.(d) A description of considerations related to common behavioral patterns of fires in the area to be burned, including various burning techniques, the anticipated length of the flame and the anticipated speed of the fire; and

1.(e) The signature of the person who prepared the plan.

1.2. Before signing the written plan, the person qualified to oversee the fire must evaluate and approve the anticipated impact of the fire on surrounding areas which are sensitive to smoke.

1.3. The state forester firewarden shall establish the qualifications for a person to oversee a controlled fire.
(Added to NRS by 1993, 1203)

Nevada Administrative Codes,
Chapter 445B, Air Controls

Air Pollution

Miscellaneous Provisions

NAC 445B.381 Open burning.

1. The open burning of any combustible refuse, waste, garbage, oil, or for any salvage operations, except as specifically exempted, is prohibited.

2. This section does not apply to open burning:

(a) Approved in advance by the director.

(b) Concurred in by the director and authorized by an officer of the state or its political subdivisions for the purpose of weed abatement, conservation, disease control, game or forest management, personnel training or elimination of hazards.

(c) For agricultural purposes and management except where prohibited by local ordinances or regulations.

(d) At single-family residences, unless prohibited by local ordinances or regulations, in all areas of the state except in and within 1 mile of the boundaries of the following cities, towns and areas: Babbitt, Battle Mountain, Caliente, Carlin, East Ely, Elko, Ely, Fallon, Fernley, Gabbs, Gardnerville, Gardnerville Ranchos, Genoa, Hawthorne, Johnson Lane, Lovelock, McGill, Minden, Tonopah, Topaz Ranch Estates, Virginia City, Weed Heights, Wells, Winnemucca and Yerington; and on the Nevada side of the Tahoe Basin, in Carson City and in those portions of Douglas and Lyon counties that are within 1 mile of the Carson City line.

(e) Of small wood fires for recreational, educational, ceremonial, heating or cooking purposes.

3. All open burning must be attended and controlled at all times to eliminate fire hazards.

[Environmental Comm'n, Air Quality Reg. Art. 5, eff. 11-7-75; A 5-8-77]—(Substituted in revision for NAC 445.753)

Federal Clean Air Act,
Title I - Air Pollution Prevention and Control,
Part A - Air Quality and Emission Limitations,
Section 110, Implementation Plans

Sec. 110. (a)(1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 109 for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph.

(2) Each implementation plan submitted by a State under this Act shall be adopted by the State after reasonable notice and public hearing. Each such plan shall -

(A) include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act;

(B) provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to -

(i) monitor, compile, and analyze data on ambient air quality, and

(ii) upon request, make such data available to the Administrator;

(C) include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;

(D) contain adequate provisions -

(i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will -

(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or

(II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility,

(ii) insuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement);

(E) provide (i) necessary assurances that the State (or, except where the Administrator deems

inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof),

(ii) requirements that the State comply with the requirements respecting State boards under section 128, and

(iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision;

(F) require, as may be prescribed by the Administrator -

(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,

(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and

(iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection;

(G) provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority;

(H) provide for revision of such plan -

(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and

(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this Act;

(I) in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas);

(J) meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection);

(K) provide for -

(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and

(ii) the submission, upon request, of data related to such air quality modeling to the Administrator;

(L) require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover -

(i) the reasonable costs of reviewing and acting upon any application for such a permit, and

(ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect t such sources by the Administrator's approval of a fee program under title V; and

(M) provide for consultation and participation by local political subdivisions affected by the plan.

(3) [(A)]

(B) As soon as practicable, the Administrator shall, consistent with the purposes of this Act and the Energy Supply and Environmental Coordination Act of 1974, review each State's applicable implementation plans and report to the State on whether such plans can be revised in relation to fuel burning stationary sources (or persons supplying fuel to such sources) without interfering with the attainment and maintenance of any national ambient air quality standard within the period permitted in this section. If the Administrator determines that any such plan can be revised, he shall notify the State that a plan revision may be submitted by the State. Any plan revision which is submitted by the State shall, after public notice and opportunity for public hearing, be approved by the Administrator if the revision relates only to fuel burning stationary sources (or persons supplying fuel to such sources), and the plan as revised complies with paragraph (2) of this subsection. The Administrator shall approve or disapprove any revision no later than three months after its submission.

(C) Neither the State, in the case of a plan (or portion thereof) approved under this subsection, nor the Administrator, in the case of a plan (or portion thereof) promulgated under subsection (c), shall be required to revise an applicable implementation plan because one or more exemptions under section 118 (relating to Federal facilities), enforcement orders under section 113(d), suspensions under section 110 (f) or (g) (relating to temporary energy or economic authority), orders under section 119 (relating to primary nonferrous smelters), or extensions of compliance in decrees entered under section 113(e) (relating to iron- and steel-producing operations) have been granted, if such plan would have met the requirements of this section if no such exemptions, orders, or extensions had been granted.

[(4)]

(5)(A)(i) Any State may include in a State implementation plan, but the Administrator may not require as a condition of approval of such plan under this section, any indirect source review program. The Administrator may approve and enforce, as part of an applicable implementation plan, an indirect source review program which the State chooses to adopt and submit as part of its plan.

(ii) Except as provided in subparagraph (B), no plan promulgated by the Administrator shall include any indirect source review program for any air quality control region, or portion thereof.

(iii) Any State may revise an applicable implementation plan approved under section 110(a) to suspend or revoke any such program included in such plan, provided that such plan meets the requirements of this section.

(B) The Administrator shall have the authority to promulgate, implement and enforce regulations under section 110(c) respecting indirect source review programs which apply only to federally assisted highways, airports, and other major federally assisted indirect sources and federally owned or operated indirect sources.

(C) For purposes of this paragraph, the term "indirect source" means a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution. Such term includes parking lots, parking garages, and other facilities subject to any measure for management of parking supply (within the meaning of section 110(c)(2)(D)(ii)), including regulation of existing off-street parking but such term does not include new or existing on-street parking. Direct emissions sources or facilities at, within, or associated with, any indirect source shall not be deemed indirect sources for the purpose of this paragraph.

(D) For purposes of this paragraph the term "indirect source review program" means the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a new or modified indirect source will not attract mobile sources of air pollution, the emissions from which would cause or contribute to air pollution concentrations -

(I) exceeding any national primary ambient air quality standard for a mobile source-related air pollutant after the primary standard attainment date, or

(ii) preventing maintenance of any such standard after such date.

(E) For purposes of this paragraph and paragraph (2)(B), the term "transportation control measure" does not include any measure which is an "indirect source review program".

(6) No State plan shall be treated as meeting the requirements of this section unless such plan provides that in the case of any source which uses a supplemental, or intermittent control system for purposes of meeting the requirements of an order under section 113(d) or section 119 (relating to primary nonferrous smelter orders), the owner or operator of such source may not temporarily reduce the pay of any employee by reason of the use of such supplemental or intermittent or other dispersion dependent control system.

(b) The Administrator may, wherever he determines necessary, extend the period for submission of any plan or portion thereof which implements a national secondary ambient air-quality standard for a period not to exceed eighteen months from the date otherwise required for submission of such plan.

(c)(1) The Administrator shall promulgate a Federal implementation plan at any time within 2 years after the Administrator -

(A) finds that a State has failed to make a required submission or finds that the plan or plan revision submitted by the State does not satisfy the minimum criteria established under section 110(k)(1)(A), or

(B) disapproves a State implementation plan submission in whole or in part, unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such Federal implementation plan.

(2) [(A)]

(B) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon the date of enactment of this subparagraph. This subparagraph shall not prevent the Administrator from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any implementation plan submitted by a State on such plan's including a parking surcharge regulation.

[(C)]

(D) For purposes of this paragraph -

(I) The term "parking surcharge regulation" means a regulation imposing or requiring the imposition of any tax, surcharge, fee, or other charge on parking spaces, or any other area used for the temporary storage of motor vehicles.

(ii) The term "management of parking supply" shall include any requirement providing that any new facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations.

(iii) The term "preferential bus/car pool lane" shall include any requirement for the setting aside of one or more lanes of a street or highway on a permanent or temporary basis for the exclusive use of buses or car pools, or both.

(E) No standard, plan, or requirement, relating to management of parking supply or preferential bus/car pool lanes shall be promulgated after the date of enactment of this paragraph by the Administrator pursuant to this section, unless such promulgation has been subjected to at least one public hearing which has been held in the area affected and for which reasonable notice has been given in such area. If substantial changes are made following public hearings, one or more additional hearings shall be held in such area after such notice.

(3) Upon application of the chief executive officer of any general purpose unit of local government, if the Administrator determines that such unit has adequate authority under State or local law, the Administrator may delegate to such unit the authority to implement and enforce within the jurisdiction of such unit any part of a plan promulgated under this subsection. Nothing in this paragraph shall prevent the Administrator from implementing or enforcing any applicable provision of a plan promulgated under this subsection.

(5) (A) Any measure in an applicable implementation plan which requires a toll or other charge for the use of a bridge located entirely within one city shall be eliminated from such plan by the Administrator upon application by the Governor of the State, which application shall include a certification by the Governor that he will revise such plan in accordance with subparagraph (B).

(B) In the case of any applicable implementation plan with respect to which a measure has been eliminated under subparagraph (A), such plan shall, not later than one year after the date of the enactment of this subparagraph, be revised to include comprehensive measures to:

(I) establish, expand, or improve public transportation measures to meet basic transportation needs, as expeditiously as is practicable; and

(ii) implement transportation control measures necessary to attain and maintain national ambient air quality standards, and such revised plan shall, for the purpose of implementing such comprehensive public transportation measures, include requirements to use (insofar as is necessary) Federal grants, State or local funds, or any combination of such grants and funds as may be consistent with the terms of the legislation providing such grants and funds. Such measures shall, as a substitute for the tolls or charges eliminated under subparagraph (A), provide for emissions reductions equivalent to the reductions which may reasonably be expected to be achieved through the use of the tolls or charges eliminated.

(C) Any revision of any implementation plan for purposes of meeting the requirements of subparagraph (B) shall be submitted in coordination with any plan revision required under part D.

[(e)]

[(f)]1

(f)(1) Upon application by the owner or operator of a fuel burning stationary source, and after notice and opportunity for public hearing, the Governor of the State in which such source is located may petition the President to determine that a national or regional energy emergency exists of such severity that -

(A) a temporary suspension of any part of the applicable implementation plan or any requirement under section 411 (concerning excess emissions penalties or offsets) of title IV of the Act may be necessary, and

(B) other means of responding to the energy emergency may be inadequate. Such determination shall not be delegable by the President to any other person. If the President determines that a national or regional energy emergency of such severity exists, a temporary emergency suspension of any part of an applicable implementation plan or any requirement under section 411 (concerning excess emissions penalties or offsets) of title IV of the Act adopted by the State may be issued by the Governor of any State covered by the President's determination under the condition specified in paragraph (2) and may take effect immediately.

(2) A temporary emergency suspension under this subsection shall be issued to a source only if the Governor of such State finds that -

(A) there exists in the vicinity of such source a temporary energy emergency involving high levels of unemployment or loss of necessary energy supplies for residential dwellings; and

(B) such unemployment or loss can be totally or partially alleviated by such emergency suspension.

Not more than one such suspension may be issued for any source on the basis of the same set of circumstances or on the basis of the same emergency.

(3) A temporary emergency suspension issued by a Governor under this subsection shall remain in effect for a maximum of four months or such lesser period as may be specified in a disapproval order of the Administrator, if any. The Administrator may disapprove such suspension if he determines that it does not meet the requirements of paragraph (2).

(4) This subsection shall not apply in the case of a plan provision or requirement promulgated by the Administrator under subsection (c) of this section, but in any such case the President may grant a temporary emergency suspension for a four month period of any such provision or requirement if he makes the determinations and findings specified in paragraphs (1) and (2).

(5) The Governor may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under section 119, as in effect before the date of the enactment of this paragraph or section 113(d) of this Act, upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.

(g)(1) In the case of any State which has adopted and submitted to the Administrator a proposed plan revision which the State determines -

(A) meets the requirements of this section, and

(B) is necessary (I) to prevent the closing for one year or more of any source of air pollution, and (ii) to prevent substantial increases in unemployment which would result from such closing, and which the Administrator has not approved or disapproved under this section within 12 months

of submission of the proposed plan revision, the Governor may issue a temporary emergency suspension of the part of the applicable implementation plan for such State which is proposed to be revised with respect to such source. The determination under subparagraph (B) may not be made with respect to a source which would close without regard whether or not the proposed plan revision is approved.

(2) A temporary emergency suspension issued by a Governor under this subsection shall remain in effect for a maximum of four months or such lesser period as may be specified in a disapproval order of the Administrator. The Administrator may disapprove such suspension if he determines that it does not meet the requirements of this subsection.

(3) The Governor may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under section 119 as in effect before the date of the enactment of this paragraph, or under section 113(d) upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.

(h)(1) Not later than 5 years after the date of enactment of the Clean Air Act Amendments of 1990, and every three years thereafter, the Administrator shall assemble and publish a comprehensive document for each State setting forth all requirements of the applicable implementation plan for such State and shall publish notice in the Federal Register of the availability of such documents.

(2) The Administrator may promulgate such regulations as may be reasonably necessary to carry out the purpose of this subsection.

(I) Except for a primary nonferrous smelter order under section 119, a suspension under section 110 (f) or (g) (relating to emergency suspensions), an exemption under section 118 (relating to certain Federal facilities), an order under section 113(d) (relating to compliance orders), a plan promulgation under section 110(c), or a plan revision under section 110(a)(3), no order, suspension, plan revision, or other action modifying any requirement of an applicable implementation plan may be taken with respect to any stationary source by the State or by the Administrator.

(j) As a condition for issuance of any permit required under this title, the owner or operator of each new or modified stationary source which is required to obtain such a permit must show to the satisfaction of the permitting authority that the technological system of continuous emission reduction which is to be used will enable such source to comply with the standards of performance which are to apply to such source and that the construction or modification and operation of such source will be in compliance with all other requirements of this Act.

(k) Environmental Protection Agency Action on Plan Submissions.-

(1) Completeness of plan submissions.-

(A) Completeness criteria.- Within 9 months after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate minimum criteria that any plan submission must meet before the Administrator is required to act on such submission under this subsection. The criteria shall be limited to the information necessary to enable the Administrator to determine whether the plan submission complies with the provisions of this Act.

(B) Completeness finding.- Within 60 days of the Administrator's receipt of a plan or plan

revision, but no later than 6 months after the date, if any, by which a State is required to submit the plan or revision, the Administrator shall determine whether the minimum criteria established pursuant to subparagraph (A) have been met.

Any plan or plan revision that a State submits to the Administrator, and that has not been determined by the Administrator (by the date 6 months after receipt of the submission) to have failed to meet the minimum criteria established pursuant to subparagraph (A), shall on that date be deemed by operation of law to meet such minimum criteria.

(C) Effect of finding of incompleteness.- Where the Administrator determines that a plan submission (or part thereof) does not meet the minimum criteria established pursuant to subparagraph (A), the State shall be treated as not having made the submission (or, in the Administrator's discretion, part thereof).

(2) Deadline for action.- Within 12 months of a determination by the Administrator (or a determination deemed by operation of law) under paragraph (1) that a State has submitted a plan or plan revision (or, in the Administrator's discretion, part thereof) that meets the minimum criteria established pursuant to paragraph (1), if applicable (or, if those criteria are not applicable, within 12 months of submission of the plan or revision), the Administrator shall act on the submission in accordance with paragraph (3).

(3) Full and partial approval and disapproval.- In the case of any submittal on which the Administrator is required to act under paragraph (2), the Administrator shall approve such submittal as a whole if it meets all of the applicable requirements of this Act. If a portion of the plan revision meets all the applicable requirements of this Act, the Administrator may approve the plan revision in part and disapprove the plan revision in part. The plan revision shall not be treated as meeting the requirements of this Act until the Administrator approves the entire plan revision as complying with the applicable requirements of this Act.

(4) Conditional approval.- The Administrator may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision.
Any such conditional approval shall be treated as a disapproval if the State fails to comply with such commitment.

(5) Calls for plan revisions.- Whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant national ambient air quality standard, to mitigate adequately the interstate pollutant transport described in section 176A or section 184, or to otherwise comply with any requirement of this Act, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies. The Administrator shall notify the State of the inadequacies, and may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions. Such findings and notice shall be public. Any finding under this paragraph shall, to the extent the Administrator deems appropriate, subject the State to the requirements of this Act to which the State was subject when it developed and submitted the plan for which such finding was made, except that the Administrator may adjust any dates applicable under such requirements as appropriate (except that the Administrator may not adjust any attainment date prescribed under part D, unless such date has elapsed).

(6) Corrections.- Whenever the Administrator determines that the Administrator's action

approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

(l) Plan Revisions.- Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.

(m) Sanctions.- The Administrator may apply any of the sanctions listed in section 179(b) at any time (or at any time after) the Administrator makes a finding, disapproval, or determination under paragraphs (1) through (4), respectively, of section 179(a) in relation to any plan or plan item (as that term is defined by the Administrator) required under this Act, with respect to any portion of the State the Administrator determines reasonable and appropriate, for the purpose of ensuring that the requirements of this Act relating to such plan or plan item are met. The Administrator shall, by rule, establish criteria for exercising his authority under the previous sentence with respect to any deficiency referred to in section 179(a) to ensure that, during the 24-month period following the finding, disapproval, or determination referred to in section 179(a), such sanctions are not applied on a statewide basis where one or more political subdivisions covered by the applicable implementation plan are principally responsible for such deficiency.

(n) Savings Clauses.-

(1) Existing plan provisions.- Any provision of any applicable implementation plan that was approved or promulgated by the Administrator pursuant to this section as in effect before the date of the enactment of the Clean Air Act Amendments of 1990 shall remain in effect as part of such applicable implementation plan, except to the extent that a revision to such provision is approved or promulgated by the Administrator pursuant to this Act.

(2) Attainment dates.- For any area not designated nonattainment, any plan or plan revision submitted or required to be submitted by a State -

(A) in response to the promulgation or revision of a national primary ambient air quality standard in effect on the date of the enactment of the Clean Air Act Amendments of 1990, or

(B) in response to a finding of substantial inadequacy under subsection (a)(2) (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990), shall provide for attainment of the national primary ambient air quality standards within 3 years of the date of the enactment of the Clean Air Act Amendments of 1990 or within 5 years of issuance of such finding of substantial inadequacy, whichever is later.

(3) Retention of construction moratorium in certain areas.- In the case of an area to which, immediately before the date of the enactment of the Clean Air Act Amendments of 1990, the prohibition on construction or modification of major stationary sources prescribed in subsection (a)(2)(I) (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990) applied by virtue of a finding of the Administrator that the State containing such area had not submitted an implementation plan meeting the requirements of section 172(b)(6) (relating to establishment of a permit program) (as in effect immediately before the date of

enactment of the Clean Air Act Amendments of 1990) or 172(a)(1) (to the extent such requirements relate to provision for attainment of the primary national ambient air quality standard for sulfur oxides by December 31, 1982) as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990, no major stationary source of the relevant air pollutant or pollutants shall be constructed or modified in such area until the Administrator finds that the plan for such area meets the applicable requirements of section 172(c)(5) (relating to permit programs) or Subpart 5 of part D (relating to attainment of the primary national ambient air quality standard for sulfur dioxide), respectively.

(o) Indian Tribes.- If an Indian tribe submits an implementation plan to the Administrator pursuant to section 301(d), the plan shall be reviewed in accordance with the provisions for review set forth in this section for State plans, except as otherwise provided by regulation promulgated pursuant to section 301(d)(2). When such plan becomes effective in accordance with the regulations promulgated under section 301(d), the plan shall become applicable to all areas (except as expressly provided otherwise in the plan) located within the exterior boundaries of the reservation, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.

(p) Reports.- Any State shall submit, according to such schedule as the Administrator may prescribe, such reports as the Administrator may require relating to emission reductions, vehicle miles traveled, congestion levels, and any other information the Administrator may deem necessary to assess the development effectiveness, need for revision, or implementation of any plan or plan revision required under this Act.

[42 U.S.C. 7410]

Federal Clean Air Act,
Title I - Air Pollution Prevention and Control,
Part A - Air Quality and Emission Limitations,
Section 116, Retention of Authority

Sec. 116. Except as otherwise provided in sections 119 (c), (e), and (f)(as in effect before the date of the enactment of the Clean Air Act Amendments of 1977), 209, 211(c)(4), and 233 (preempting certain State regulation of moving sources) nothing in this Act shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan or under section 111 or 112, such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section.
[42 U.S.C. 7416]

Federal Clean Air Act,
Title I - Air Pollution Prevention and Control,
Part A - Air Quality and Emission Limitations,
Section 118, Control of Pollution from Federal Facilities

Sec. 118. (a) General Compliance.- Each department, agency, and instrumentality of executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge of air pollutants, and each officer, agent, or employee thereof, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of air pollution in the same manner, and to the same extent as any nongovernmental entity. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement whatsoever), (B) to any requirement to pay a fee or charge imposed by any State or local agency to defray the costs of its air pollution regulatory program, (C) to the exercise of any Federal, State, or local administrative authority, and (D) to any process and sanction, whether enforced in Federal, State, or local courts, or in any other manner. This subsection shall apply notwithstanding any immunity of such agencies, officers, agents, or employees under any law or rule of law. No officer, agent, or employee of the United States shall be personally liable for any civil penalty for which he is not otherwise liable.

Federal Clean Air Act,
Title I - Air Pollution Prevention and Control,
Part C - Prevention of Significant Deterioration of Air Quality,
Subpart 2 - Visibility Protection,
Section 169A, Visibility Protection for Federal Class I Areas

Sec. 169A. (a)(1) Congress hereby declares as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.

(2) Not later than six months after the date of the enactment of this section, the Secretary of the Interior in consultation with other Federal land managers shall review all mandatory class I Federal areas and identify those where visibility is an important value of the area. From time to time the Secretary of the Interior may revise such identifications. Not later than one year after such date of enactment, the Administrator shall, after consultation with the Secretary of the Interior, promulgate a list of mandatory class I Federal areas in which he determines visibility is an important value.

(3) Not later than eighteen months after the date of enactment of this section, the Administrator shall complete a study and report to Congress on available methods for implementing the

national goal set forth in paragraph (1). Such report shall include recommendations for -

(A) methods for identifying, characterizing, determining, quantifying, and measuring visibility impairment in Federal areas referred to in paragraph (1), and

(B) modeling techniques (or other methods) for determining the extent to which manmade air pollution may reasonably be anticipated to cause or contribute to such impairment, and

(C) methods for preventing and remedying such manmade air pollution and resulting visibility impairment.

Such report shall also identify the classes or categories of sources and the types of air pollutants which, alone or in conjunction with other sources or pollutants, may reasonably be anticipated to cause or contribute significantly to impairment of visibility.

(4) Not later than twenty-four months after the date of enactment of this section, and after notice and public hearing, the Administrator shall promulgate regulations to assure (A) reasonable progress toward meeting the national goal specified in paragraph (1), and (B) compliance with the requirements of this section.

(b) Regulations under subsection (a)(4) shall -

(1) provide guidelines to the States, taking into account the recommendations under subsection (a)(3) on appropriate techniques and methods for implementing this section (as provided in subparagraphs (A) through (C) of such subsection (a)(3)), and

(2) require each applicable implementation plan for a State in which any area listed by the Administrator under subsection (a)(2) is located (or for a State the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area) to contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal specified in subsection (a), including -

(A) except as otherwise provided pursuant to subsection (c), a requirement that each major stationary source which is in existence on the date of enactment of this section, but which has not been in operation for more than fifteen years as of such date, and which, as determined by the State (or the Administrator in the case of a plan promulgated under section 110(c)) emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area, shall procure, install, and operate, as expeditiously as practicable (and maintain thereafter) the best available retrofit technology, as determined by the State (or the Administrator in the case of a plan promulgated under section 110(c)) for controlling emissions from such source for the purpose of eliminating or reducing any such impairment, and

(B) a long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal specified in subsection (a).

In the case of a fossil-fuel fired generating powerplant having a total generating capacity in excess of 750 megawatts, the emission limitations required under this paragraph shall be determined pursuant to guidelines, promulgated by the Administrator under paragraph (1).

(c)(1) The Administrator may, by rule, after notice and opportunity for public hearing, exempt any major stationary source from the requirement of subsection (b)(2)(A), upon his determination that such source does not or will not, by itself or in combination with other sources, emit any air pollutant which may reasonably be anticipated to cause or contribute to a significant impairment of visibility in any mandatory class I Federal area.

(2) Paragraph (1) of this subsection shall not be applicable to any fossil-fuel fired powerplant with total design capacity of 750 megawatts or more, unless the owner or operator of any such plant demonstrates to the satisfaction of the Administrator that such powerplant is located at such distance from all areas listed by the Administrator under subsection (a)(2) that such powerplant does not or will not, by itself or in combination with other sources, emit any air pollutant which may reasonably be anticipated to cause or contribute to significant impairment of visibility in any such area.

(3) An exemption under this subsection shall be effective only upon concurrence by the appropriate Federal land manager or managers with the Administrator's determination under this subsection.

(d) Before holding the public hearing on the proposed revision of an applicable implementation plan to meet the requirements of this section, the State (or the Administrator, in the case of a plan promulgated under section 110(c)) shall consult in person with the appropriate Federal land manager or managers and shall include a summary of the conclusions and recommendations of the Federal land managers in the notice to the public.

(e) In promulgating regulations under this section, the Administrator shall not require the use of any automatic or uniform buffer zone or zones.

(f) For purposes of section 304(a)(2), the meeting of the national goal specified in subsection (a)(1) by any specific date or dates shall not be considered a "nondiscretionary duty" of the Administrator.

(g) For the purpose of this section -

(1) in determining reasonable progress there shall be taken into consideration the costs of compliance, the time necessary for compliance, and the energy and nonair quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements;

(2) in determining best available retrofit technology the State (or the Administrator in determining emission limitations which reflect such technology) shall take into consideration the costs of compliance, the energy and nonair quality environmental impacts of compliance, any existing pollution control technology in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology;

(3) the term "manmade air pollution" means air pollution which results directly or indirectly from human activities;

(4) the term "as expeditiously as practicable" means as expeditiously as practicable but in no event later than five years after the date of approval of a plan revision under this section (or the date of promulgation of such a plan revision in the case of action by the Administrator under section 110(c) for purposes of this section);

(5) the term "mandatory class I Federal areas" means Federal areas which may not be designated as other than class I under this part;

(6) the terms "visibility impairment" and "impairment of visibility" shall include reduction in visual range and atmospheric discoloration; and

(7) the term "major stationary source" means the following types of stationary sources with the potential to emit 250 tons or more of any pollutant; fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (thermal dryers),

kraft pulp mills, Portland Cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production facilities, chemical process plants, fossil-fuel boilers of more than 250 million British thermal units per hour heat input, petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels, taconite ore processing facilities, glass fiber processing plants, charcoal production facilities.
[42 U.S.C. 7491]

Federal Clean Air Act,
Title I - Air Pollution Prevention and Control,
Part D - Plan Requirements for Nonattainment Areas,
Subpart 1 - Nonattainment Areas in General,
Section 176(c), Limitations on Certain Federal Assistance

Sec. 176. [Subsections (a) and (b), repealed by P.L. 10109549, sec.110(4), 104 Stat. 2470.]

(c)(1) No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to an implementation plan after it has been approved or promulgated under section 110. No metropolitan planning organization designated under section 134 of title 23, United States Code, shall give its approval to any project, program, or plan which does not conform to an implementation plan approved or promulgated under section 110. The assurance of conformity to such an implementation plan shall be an affirmative responsibility of the head of such department, agency, or instrumentality. Conformity to an implementation plan means-

(A) conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards; and

(B) that such activities will not-

(i) cause or contribute to any new violation of any standard in any area;

(ii) increase the frequency or severity of any existing violation of any standard in any area; or

(iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The determination of conformity shall be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel and congestion estimates as determined by the metropolitan planning organization or other agency authorized to make such estimates.

(2) Any transportation plan or program developed pursuant to title 23, United States Code, or the Urban Mass Transportation Act shall implement the transportation provisions of any

applicable implementation plan approved under this Act applicable to all or part of the area covered by such transportation plan or program. No Federal agency may approve, accept or fund any transportation plan, program or project unless such plan, program or project has been found to conform to any applicable implementation plan in effect under this Act. In particular-

(A) no transportation plan or transportation improvement program may be adopted by a metropolitan planning organization designated under title 23, United States Code, or the Urban Mass Transportation Act, or be found to be in conformity by a metropolitan planning organization until a final determination has been made that emissions expected from implementation of such plans and programs are consistent with estimates of emissions from motor vehicles and necessary emissions reductions contained in the applicable implementation plan, and that the plan or program will conform to the requirements of paragraph (1)(B);

(B) no metropolitan planning organization or other recipient of funds under title 23, United States Code, or the Urban Mass Transportation Act shall adopt or approve a transportation improvement program of projects until it determines that such program provides for timely implementation of transportation control measures consistent with schedules included in the applicable implementation plan;

(C) a transportation project may be adopted or approved by a metropolitan planning organization or any recipient of funds designated under title 23, United States Code, or the Urban Mass Transportation Act, or found in conformity by a metropolitan planning organization or approved, accepted, or funded by the Department of Transportation only if it meets either the requirements of subparagraph (D) or the following requirements-

(i) such a project comes from a conforming plan and program;

(ii) the design concept and scope of such project have not changed significantly since the conformity finding regarding the plan and program from which the project derived; and

(iii) the design concept and scope of such project at the time of the conformity determination for the program was adequate to determine emissions.

(D) Any project not referred to in subparagraph (C) shall be treated as conforming to the applicable implementation plan only if it is demonstrated that the projected emissions from such project, when considered together with emissions projected for the conforming transportation plans and programs within the nonattainment area, do not cause such plans and programs to exceed the emission reduction projections and schedules assigned to such plans and programs in the applicable implementation plan.

(3) Until such time as the implementation plan revision referred to in paragraph (4)(C) is approved, conformity of such plans, programs, and projects will be demonstrated if-

(A) the transportation plans and programs-

(i) are consistent with the most recent estimates of mobile source emissions;

(ii) provide for the expeditious implementation of transportation control measures in the applicable implementation plan; and

(iii) with respect to ozone and carbon monoxide nonattainment areas, contribute to annual emissions reductions consistent with sections 182(b)(1) and 187(a)(7); and

(B) the transportation projects-

(i) come from a conforming transportation plan and program as defined in subparagraph (A) or for 12 months after the date of the enactment of the Clean Air Act Amendments of 1990,

from a transportation program found to conform within 3 years prior to such date of enactment; and

(ii) in carbon monoxide nonattainment areas, eliminate or reduce the severity and number of violations of the carbon monoxide standards in the area substantially affected by the project.

With regard to subparagraph (B)(ii), such determination may be made as part of either the conformity determination for the transportation program or for the individual project taken as a whole during the environmental review phase of project development.

(4)(A) No later than one year after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate criteria and procedures for determining conformity (except in the case of transportation plans, programs, and projects) of, and for keeping the Administrator informed about, the activities referred to in paragraph (1). No later than one year after such date of enactment, the Administrator, with the concurrence of the Secretary of Transportation, shall promulgate criteria and procedures for demonstrating and assuring conformity in the case of transportation plans, programs, and projects. A suit may be brought against the Administrator and the Secretary of Transportation under section 304 to compel promulgation of such criteria and procedures and the Federal district court shall have jurisdiction to order such promulgation.

(B) The procedures and criteria shall, at a minimum-

(i) address the consultation procedures to be undertaken by metropolitan planning organizations and the Secretary of Transportation with State and local air quality agencies and State departments of transportation before such organizations and the Secretary make conformity determinations;

(ii) address the appropriate frequency for making conformity determinations, but in no case shall such determinations for transportation plans and programs be less frequent than every three years; and

(iii) address how conformity determinations will be made with respect to maintenance plans.

(C) Such procedures shall also include a requirement that each State shall submit to the Administrator and the Secretary of Transportation within 24 months of such date of enactment, a revision to its implementation plan that includes criteria and procedures for assessing the conformity of any plan, program, or project subject to the conformity requirements of this subsection.

(d) Each department, agency, or instrumentality of the Federal Government having authority to conduct or support any program with air-quality related transportation consequences shall give priority in the exercise of such authority, consistent with statutory requirements for allocation among States or other jurisdictions, to the implementation of those portions of plans prepared under this section to achieve and maintain the national primary ambient air quality standard. This paragraph extends to, but is not limited to, authority exercised under the Urban Mass Transportation Act, title 23 of the United States Code, and the Housing and Urban Development Act.

[42 U.S.C. 7506]